Supreme Court, U.S.
FILED
06-256 JUN 2 2006
OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

Norm ERTY
Norman Parsons

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Norman Parsons

Petitioner

535 N. Church Street
Visalia, California,
93291-5004

QUESTIONS PRESENTED

1. What standard should be applied in the lower courts in determining the admissibility of new evidence in the context of the latitude historically provided to *pro-se* litigants?

2. Has the United States Court of Federal Claims misapplied and misinterpreted past Supreme Court decisions concerning subject matter jurisdiction of the Court of Claims and therefore denied Plaintiff due process of law under the Fifth Amendment of the United States Constitution?

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 14.1(b), the following is the petitioning party here and the appellant before the United States Court of Appeals for the Federal Circuit:

> Norman Parsons in behalf of LINMAR PROPERTY MANAGEMENT TRUST.

The following is the respondent here and appellee below:

> The United States.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....ii
PARTIES TO THE PROCEEDING.....iii
TABLE OF CONTENTS.....iv
TABLE OF AUTHORITIES.....v
OPINIONS BELOW.....2
JURISDICTION.....2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....2
STATEMENT.....3
REASONS FOR GRANTING THE PETITION.....11
CONCLUSION.....15
APPENDIX A.....16
APPENDIX B.....24
APPENDIX C.....28

TABLE OF AUTHORITIES

CASES

Clinton v. United States, 191Ct. Cl. 604, 423 F.2d 1367.....5
Eastport Steamship Corporation v. The United States 178 Ct. Cl. 599; 372 F.2d 1002;.....9
Hafen v. United States, 30 Fed. Cl. 470, 473.....6
Haines v. Kerner, 404 U.S. 519, 520.....7
Hunter Louis Girault v. The United States Ct. Cl. 135; 1955.....4
United States v. Mitchell, 463 U.S. 206, 217.....3
United States v. Testan, 424 U.S. 392, 400.....3
Untied States v. White Mountain Apache Tribe 537 U.S. 465, 473 (2003).....3
Ware v. United States 57 Fed Cl. 782, 784.....6

STATUTES

28 U.S.C § 1491.....2

CONSTITUTIONAL PROVISION

Fifth Amendment.....2

In the
Supreme Court of the United States

No. _____

Norman Parsons in behalf of LINMAR PROPERTY MANAGEMENT TRUST, PETITIONER

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully submits this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case, and in so doing, agree to determine what standards should be applied in the lower courts in determining the admissibility of new evidence in the context of the latitude historically provided to *pro-se* litigants.

Petitioner respectfully submits this petition for a writ of certiorari to review the judgment of the Untied States Court of Federal Claims and in doing so agree to determine whether Court of Claims has misapplied and misinterpreted past Supreme Court decisions concerning subject matter jurisdiction of the Court of Claims under the Tucker Act.

OPINIONS BELOW

The decision of the Federal Circuit Court of Appeals, decided per curium, is attached as Appendix A

The order of the United States Court of Federal Claims is attached as Appendix B

JURISDICTION

The decision of the court of appeals was entered on March 10, 2006. The decision of this court is invoked under 28 U.S.C. 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in relevant part that "... nor shall any person ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

The Tucker Act, (28 U.S.C. 1491) states in relevant part, "The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

STATEMENT

The case of Norman Parsons in behalf of Linmar Property Management Trust v. United States, (herein after referred to as 'Linmar') attempts to bring to the forum the questions presented to this Court. In September of 2004, in the absence of any audit or examination and beyond the three-year limitation of assessment, the IRS sent a Notice of Deficiency to Plaintiff, disallowing $140,935.33 of deductions on a tax return for the year ending in 2000. In addition to the disallowed deductions a penalty of $28,187.07 has been imposed upon Linmar Property Management Trust. Plaintiff filed a claim for money damages in the United States Court of Federal Claims, (hereinafter referred to as, 'Court of Claims') against the United States pursuant to the Tucker Act asking for compensation for damages sustained as the result of the said Notice of Deficiency being issued out of compliance with cited regulatory requirements and established procedures.

The United States Court of Federal Claims dismissed Plaintiff's suit for lack of subject matter jurisdiction stating that the Tucker Act only confers jurisdiction where the Plaintiff identifies an accompanying substantive claim that "can fairly be interpreted as mandating compensation by the Government for the damages sustained" *United States v. Mitchell,* 463 U.S. 206, 217 (1983) (quoting *United States v. Testan,* 424 U.S. 392, 400 (1976). See also *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 473 (2003) ("a fair inference will do")" The Court of Claims further stated that the statutory provisions and regulations cited by the Plaintiff did not mandate the

payment of money for their violation. (see Appendix B for order of the Court of Claims.)

Linmar entered a Motion for Reconsideration to the Court of Claims, which was denied on the ground that it was an untimely filing (see Appendix C for order of the Court of Claims). Plaintiff then petitioned the decision of the Court of Claims to the United States Court of Appeals For The Federal Circuit (hereinafter referred to as, 'Court of Appeals') based upon evidence newly discovered by the Plaintiff supporting the claim of implied contracts and citing additional substantive laws that could fairly be interpreted as mandating compensation by the Federal Government for damages sustained. (see Appendix A for order of the Court of Appeals).

The Court of Appeals affirmed the Court of Claims' denial of Linmar's motion for reconsideration on the ground that "Newly discovered evidence is only such evidence as could not have been discovered by the exercise of due diligence prior to the rendition of the initial decision." *Hunter Louis Girault v. The United States* Ct. Cl. 135; 1955.

In the case of *Clinton v. United States,* 191 Ct. Cl. 604, 423 F.2d 1367 (1970), the pro se claimant was not expected to prepare pleadings according to the formal requirement demanded of lawyers and was allowed to amend his petition to the court even though it would have been in violation of rule 39(e) of the Rules of the United States Court of Federal Claims.

> "However, the right of persons to represent themselves is well recognized as is also the practical impossibility that such persons can be

> expected to prepare pleadings according to the formal requirements that can be demanded of attorneys, no matter how many times they try. *Clinton v. United States,* 191 Ct. Cl. 604, 423 F.2d 1367 (1970)"
>
> "We think the interests of justice here will be served if the motion for leave to amend is allowed since it does serve to clarify the nature of the plaintiff's claim, to an extent sufficient for the court to rule on it. The motion for leave to amend is, therefore, allowed." *Clinton v. United States,* 191 Ct. Cl. 604, 423 F.2d 1367 (1970)"

In the case *Haines v. Kerner*, 404 U.S. 519, 520, (1972), the court held that the inmate's allegations were sufficient to require that he be provided the opportunity to offer supporting evidence.

> "...allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the *pro se* complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers..." *Haines v. Kerner*, 404 U.S. 519, 520, (1972)"
>
> "The allegations of a pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520, (1972)"

From the case of *Haines v. Kerner*, 404 U.S. 519, 520, (1972), it was determined by this Court that [serious] allegations from a pro se claimant should be provided

with an opportunity to offer supporting evidence. It should then naturally follow that the allegation of money improperly exacted by the IRS commands that the pro se Claimant in Linmar be provided with the opportunity to offer supporting evidence.

In the case of *Hafen v. United States* 30 Fed. Cl. 470; 1994, it is stated as follows:

> "The Court of Federal Claims and its predecessor, the Court of Claims, have historically given significant leeway to pro se plaintiffs. *Hafen v. United States* 30 Fed. Cl. 470; 1994"

In the case of *Ware v. United States* 57 Fed Cl. 782, 784, 2003 it is stated as follows:

> "This Court has historically given "significant leeway" to *pro se* plaintiffs. *Hafen v. United States*, 30 Fed. Cl. 470, 473 (1994). *See also Haines v. Kerner*, 404 U.S. 519, 520, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972) ("pro se complaint... held to less stringent standards than formal pleadings proffered by lawyers")" *Ware v. United States* 57 Fed Cl. 782, 784, 2003

Linmar, as a pro se litigant, has been held to the same stringent standards expected of lawyers by the Court of Appeals in its decision to disallow the Plaintiff to offer supporting evidence which is critical and pertinent to the case. Plaintiff herein also calls attention to the term "significant" in "significant leeway" in *Hafen,* and herein maintains that this term, while not precisely defined, is deliberately chosen. The leeway to be granted to pro-se litigants is not to be mitigated or marginalized when the issue of fair and impartial justice is at stake.

In restating *Haines v. Kerner*, 404 U.S. 519

> "allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence"

According to Black's Law Dictionary, Fifth Edition, page 102, the definition of art is:

> "Systematic application of knowledge or skill in effecting a desired result; also in employment, occupation or business requiring such knowledge or skill"

Without a doubt Linmar, as a pro se litigant, does not possess the skill of a lawyer nor the systematic application of knowledge to effect a desired result when petitioning any court in the United States and therefore should not be denied the opportunity by the Court of Appeals to offer supporting evidence especially when the supporting evidence is essential and critical to the case. The Plaintiff did not know and could not reasonably be expected to have known the full extent of all the contractual aspects of the case. The decision of the Court of Appeals not to grant Plaintiff wide latitude in the presentation of pertinent evidence is in opposition to the system of American jurisprudence and court precedence. As this inconsistent application of a judicial principal is inimical to the pursuit of justice, guidance by this Court is required to determine and set standards for the lower courts on what constitutes "new evidence" and the meaning of "significant leeway" for pro se litigants.

The Plaintiff further maintains that The Court of Claims has erroneously denied subject matter jurisdiction in

Linmar based upon faulty interpretations of previous Supreme Court decisions.

The Tucker Act codified as 28 U. S. C. 1491, states in pertinent part that,

> "The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

In United States v. Testan, 424 U.S. 392, (1976), This Court determined that Court of Claims had no jurisdiction to grant equitable relief to claimants bringing suit against the United States and that the jurisdiction of the Court of Claims, established by Congress, had been limited to money claims against the United States Government.

> "This Court observed that the Court of Claims was established by Congress in 1855; that "throughout its entire history," until the King case was filed, "its jurisdiction has been limited to money claims against the United States Government: *United States v. Testan* 424 U.S. 392"

It is further stated in *Testan* that,

> Where the United States is the defendant and the plaintiff is not suing for money improperly exacted or retained, the basis of the federal claim -

> whether it be the Constitution, a statute, or a regulation - does not create a cause of action for money damages unless, as the Court of Claims has stated, that basis "in itself . . . can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained." Eastport S. S. Corp. v. United States, 178 Ct. Cl., at 607, 372 F.2d, at 1008, 1009

As demonstrated above in the case of *Testan*, this court only reaffirmed the jurisdictional position of the Court of Claims in a cause of action when the basis for the federal claim mandates compensation. This language does not rewrite the Tucker Act, voiding the "any claim" provision, nor does it establish a new necessary condition to be met for claims under the Tucker Act. Furthermore, the claimants in the case of *Testan* did not seek money damages based upon the Constitution, a statute or regulation.

> "the Tucker Act is merely jurisdictional, and grant of a right of action must be made with specificity. The respondents do not rest their claims upon a contract; neither do they seek the return of money paid by them to the Government. *United States v. Testan,* 424 U.S. 392"

In *Testan*, where claimants did not rest their claim upon a contract nor seek the return of money paid by them to the Government, this court determined that entitlement to money damages depended upon whether any federal statute could be interpreted as mandating compensation. *United States v. Testan,* 424 U.S. 392 reads as follows:

> "It follows that the asserted entitlement to money damages depends upon whether any federal statute "can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained." *Eastport S. S. Corp. v. United States*, 178, Ct. Cl., at 607, 372 F.2d, at 1009; Mosca v. United States, 189 Ct. Cl. 283, 290, 417 F.2d 1382, 1386 (1969)"

The Supreme court, in this case, proceeded further to consider if any federal statute could be "fairly" interpreted to mandate compensation by the Federal Government and decided there had been not.

> "We therefore conclude that neither the Classification Act nor the Back Pay Act creates a substantive right in the respondents to back pay for the period of their claimed wrongful classifications" *United States v. Testan* 424 U.S. 392"

In Linmar, where money has been improperly exacted and the claim against the United States is for money damages for this improper exaction based on the defendant's defiance of statutes and regulations, and where Linmar seeks to introduce evidence improperly excluded regarding the existence of a contract binding the defendant to those statutes and regulations, the defendants thereby being in breach of said contract, the jurisdictional requirements of the Tucker Act have been fulfilled and the case of Linmar is clearly not in conflict with the Supreme Court's clarification in *Testan*. Plaintiff maintains that the Court of Claims has incorrectly regarded the case of Linmar by interpreting *Testan* to mean that a statute or regulation for money damages must

exist before the Court of Claims can assert jurisdiction. This has the same effect as the government establishing for itself immunity from compensating citizens for damage that the government causes unless it first grants permission for redress of the grievance. This is not only a constitutional violation, but since the Court of Claims was established as a forum for the adjudications of petitions for the redress of grievance, but also an abdication of duty and office as well. Furthermore, it has been long held that the Tucker Act explicitly waives all claims of sovereign immunity for claims filed under that Act, and the Court of Claims does not have the constitutional or legislative authority to redefine it's own jurisdiction. The government cannot on the one hand waive sovereign immunity under the Tucker Act, an act in essence satisfying a constitutional mandate, and on the other so narrowly interpret the Tucker Act as to restore sovereign immunity against all liability for damaging acts against the citizens except when specific permission is given. These are constitutional violations that rise to the level of human-right abuses, and action by this Court and only this Court can address this issue.

REASONS FOR GRANTING THE PETITION

The case of Norman Parsons in behalf of Linmar Property Management Trust v. United States illuminates the ensuing endangerment of fundamental rights under the Fifth Amendment of the Constitution of the United States. In addition, the case of Linmar underscores the

importance of the United States Court of Federal Claims as an accessible forum for citizens and taxpayers to obtain one form of a redress of grievances in the face of blatant and wanton disregard of the laws of the United States by

agents and agencies acting in behalf of the Federal government. In the pursuit of justice by Linmar Property Management Trust, it has become necessary to petition the Supreme Court in order for the Trustees and Beneficiaries of Linmar Property Management Trust to protect their Constitutional and Human Rights and to uphold American jurisprudence and court precedence as it pertains to the historic practice of the courts granting pro se litigants wide latitude and not holding pro se litigants to the same stringent standards as that of lawyers.

Not to be left unconsidered is also the fact that if in this case Linmar were to be denied due process under the law without the waiver of rights, then this example would serve to discourage citizens and taxpayers from the reporting of income and the filing of a return.

Under the Fifth Amendment of the Constitution of the United States, "No person shall be ..... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." Unless the Court of Claims were to hear the case of Linmar, Plaintiff would either have to pay the alleged deficiency before the case could be heard in a Federal district court, in which case would be the taking of private property without just compensation or submit the case to the tax court, a court of special jurisdiction, where the decision would be final therefore prejudicial to the rights of the Plaintiff and therefore due process of law being denied to Plaintiff.

The Tucker Act confers jurisdiction on the Court of Claims for any claim founded on the Constitution or on any act of Congress or any regulation of an executive department, or upon any express or implied contract with

the United States, or for liquidated or unliquidated damages in cases not sounding in tort. "Founded on" cannot be interpreted to only mean "mandating money damages" precisely because such language is not in the Constitution. If this were the case, there would be no logical reason to include the term "the Constitution" – its presence in the Tucker Act would be meaningless and irrelevant, and furthermore run counter to the establishment of the Court of Claims as a forum for the redress of grievance. Indeed, the counter-argument is more logical: the inclusion of the term "the Constitution," being deliberate, expressly prohibits the government from restricting the jurisdiction of the Court of Claims only to extra-Constitutional conditions. The Court's main reason for existence is to adjudicate claims against the government for any constitutional infraction, the other terms of the Tucker Act merely conferring additional jurisdictional terms.

In this light, the Constitutional mandate for such a forum for the petition of redress of all, not only some, just grievances is satisfied by the direct language in the Tucker Act in the phrase "any claim ... founded...", with "founded" having its traditional meaning in the English language. It is for the Court of Claims to decide whether a claim is just or frivolous and falling within the direct language of the Tucker Act before accepting jurisdiction, not decide which "petitions" it will hear and those it will not based on its own rewrite of its own jurisdiction.

Linmar, in every aspect of these defining lines, has fallen within the subject-matter jurisdiction of the Court of Claims. The lower courts have, in effect, amended, modified and nullified the Tucker Act through misapplication and misinterpretation. Were this practice of the lower courts to continue, then the judicial system of the United States would also be in violation of the

separations of powers principle enshrined in the United States Constitution.

If the case of Linmar is to be denied due process of law without the waiver of rights, then why would any citizen or taxpayer willingly report income and file a return with the IRS when any or all allowable deductions can be unlawfully denied without any explanation, against all regulatory and established procedures of the United States and there being no legal forum to find a remedy without the loss of rights and the probability of financial ruin in the pursuit of justice?

Under the Constitution of the United States and by the oath of office sworn to by judges of the judicial system, it is the responsibility and contractual obligation of the courts to provide a forum for justice for all taxpayers and citizens and is incumbent upon the courts to follow procedure and just precedence. For the courts to deny Linmar the wide latitude traditionally afforded to pro se litigants in courts and not to allow evidence to be admitted violates Linmar's rights of self defense, right to contract, and right to a solution to conflict through law.

In addition to the oath of office taken by the judges of the courts of the United States, the Secretary of the Treasury, having taken an oath of office, is also under contract to taxpayers and citizens and has bound himself and all subordinates (including the IRS) to private and public laws and regulations, including the IRS regulations regarding sending notices of deficiency and proper auditing procedures.

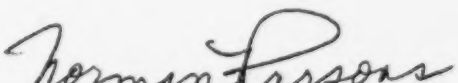
Those regulations are part of the guarantee of provision of constitutional and human rights, which the government has sworn (internationally) to uphold. As a contractual

issue, it belongs in the Court of Claims per the Tucker Act.

CONCLUSION

As this petition addresses Fifth Amendment and other constitutional issues, such as due process of law, and property and contractual rights, and in addition the fundamental functional responsibilities of a federal court, this petition for a writ of certiorari should be granted

Respectfully submitted,



Norman Parsons, in behalf of Linmar Property Management Trust.
Petitioner

535 N. Church Street
Visalia, California,
93291-5004

APPENDIX A

RECEIVED MAY 25, 2005

In the United States Court of Federal Claims

No.04-1798T

(Filed May 24, 2005)
****

NORMAN PARSONS, on behalf of LINMAR PROPERTY MANAGEMENT TRUST,
Plaintiff,

v.

THE UNITED STATES,
Defendant.

Motion to dismiss for lack of subject matter jurisdiction; RCFC 12(b)(1); absence of jurisdiction over a tax claim that seeks relief other than a refund of taxes paid.

Norman Parsons, *pro se,* Visalia, CA

Benjamin C. King, Jr., Court of Federal Claims Section, Tax Division, United States Department of Justice, Washington, D.C., for defendant. With him on the briefs were Eileen J. O'Connor, Assistant Attorney General, Mildred L. Seidman, Chief, Court of Federal Claims Section; and David Gustafson, Assistant Chief.

ORDER

On December 22,2004, plaintiff, Norman Parsons, filed a complaint in this court on behalf of Linmar Property Management Trust ("Linmar Trust" or "Trust"), respecting a notice of deficiency issued by the Internal Revenue Service ("IRS") that the Linmar Trust owed income taxes and penalties for the tax year ended December 31,2000.1/ His complaint alleges that the

---

1/ Mr. Parsons has brought this suit as trustee of the Trust, acting pro se. Pleadings filed on such a basis are held to less stringent standards than those proffered by attorneys. See Haines v. Kerner, 404 U.S. 519, 520 (1972); Ware v. United States, 57 Fed. Cl. 782, 784 (2003). The court has drawn all reasonable inferences in Mr. Parsons's favor and has construed his complaint as broadly as possible to determine whether any of the allegations state a cause of action cognizable before this court.

IRS violated 26 U.S.C. § 6501 by issuing a notice of deficiency to the Linmar Trust without having made an assessment within three years after the pertinent return was filed. Complaint at 1, 3 ("Compl.").2/ In addition, the complaint avers that the notice of deficiency "was entered" by the IRS in violation of 26 U.S.C. §§ 6201 (a)(l), 6203, and 6211, and 26 C.F.R. § 301.6203-1. Compl. at 2.

The remedies Mr. Parsons seeks on behalf of the Linmar Trust are twofold. First, he demands that the IRS "cease and desist" its "illegal activity" and follow "law and procedure" in "any attempt to collect any alleged tax

liability from Linmar." Compl. at 3. Second, he seeks $250,000 in damages. *Id.*

The government has moved to dismiss Mr. Parsons's complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Rules of the Court of Federal Claims. A hearing on the motion was held on April 19, 2005. For the reasons that follow, the government's motion is granted.

BACKGROUND

On September 23,2004, the IRS sent notice of a deficiency to the trustee of the Linmar Trust pursuant to 26 U.S.C. § 6212(a). The notice stated that the Linmar Trust owed additional taxes in the amount of $140,935.33 for the 2000 tax year. Compl., Ex. A.3/ In addition, the IRS imposed on the Linmar Trust an accuracy-related penalty pursuant to 26 U.S.C. § 6662(a) in the amount of $28,187.07. *Id.* As of the date of the hearing in this case, the Trust had not paid the deficiency. Hr'g Tr. at 22. The record does not indicate whether the IRS had made an assessment by that date. *Id.* at 24.

ANALYSIS

The Tucker Act, 28 U.S.C. § 1491, supplies the primary jurisdictional predicate for cases brought before this court. Under that statute, a complaint may be maintained in this court if, among other things, the claim

---

2/Mr. Parsons represents that he is now the trustee of the Linmar Trust and that he had that position at the time the notice of deficiency was issued. Hr'g Tr. at 6. For present purposes, the court assumes without

deciding that Mr.Parsons is authorized to represent the Linmar Trust in this case. Mr. Parsons was not the trustee at the time the tax return for the Trust was filed for the 2000 tax year. Compl., Ex. B; Hr'g Tr. at 4.

3/The notice of deficiency indicated that the IRS had disallowed deductions the Linmar Trust had made for income distribution, rental expenses, rental depreciation, capital gain on sale of land, and additional income from deposits. Compl., Ex. A (Form 4549-A). It is not determinable from the record before the court why these deductions were disallowed.

Income taxes were imposed on the Linmar Trust at the rates specified in 26 U.S.C. § 1 (e), which rates are in effect equivalent to those for individuals.

---

presented in the complaint is "founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491(a)(1). The Tucker Act by itself, however, does not provide a substantive right of recovery against the United States. Rather, save for limited exceptions not implicated here, the statute confers jurisdiction only where the plaintiff identifies an accompanying substantive claim that "'can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained.'" *United States v. Mitchell,* 463 U.S. 206, 217 (1983) (quoting *United States v. Testan,* 424 U.S. 392, 400 (1976)). *See also United States v. White Mountain Apache Tribe,* 537 US. 465, 473 (2003) ("a fair inference will do"). Mr. Parsons has not adequately alleged the existence of an express or implied contract nor has he identified a money-mandating constitutional provision, statute, or regulation that has been violated.

More specifically, Mr. Parsons does not make a claim for a tax refund, which, with very limited

exceptions, is the only type of tax dispute over which this court has jurisdiction. *See Shore v. United States,* 9 F.3d 1524, 1526 (Fed. Cir. 1993) (full-payment rule for tax refund claim does not require prepayment of interest and penalties when taxpayer only disputes tax assessment); *Tonasket v. United States,* 218 Ct. CI. 709, 711-12 (1978) (full-payment rule applies to tax refund suits in Court of Claims under 28 U.S.C. § 1491); *see also Flora v. United States,* 362 US. 145, 177 (1960) (same rule for tax claims brought before district courts under 28 U.S.C.§1346 (a)(1)).4/ Mr. Parsons asks "that the Court stop the illegal activities of the above mentioned Internal Revenue Service agents and order the said agents to follow procedure and obey the law in their dealings with [the Linmar Trust]." Plaintiff's Response to Defendant's Notice to the Court at 2 ("PI.'s Resp.") (emphasis omitted); *accord* Compl. at 3. Consequently, Mr. Parsons primarily seeks declaratory or injunctive relief. The short answer to this claim is that "[t]he Tucker Act does not provide independent jurisdiction over such claims for equitable relief." *Brown v. United States,* 105 F.3d 621, 624 (Fed. Cir. 1997) (citing *United States v. King,* 395 US. 1,2-3 (1969)).5/

4/The exceptions to this overarching jurisdictional predicate rarely are invoked. See, e.g., 28 US.C. § 1507 (grant of jurisdiction to hear declaratory judgment actions under 26 U.S.C.§ 7428, which concerns classification of entities pursuant to 26 U.S.C. § 501(c)(3) and related provisions of the Internal Revenue Code); 28 U.S.C. § 1508 (grant of jurisdiction over certain partnership proceedings under 26 U.S.C. §§ 6226 and 6228(a)); see also Brown & Williamson, Ltd. v. United States, 688 F.2d 747 (1982) (jurisdiction to allow interest on a tax refund pursuant to tax treaty that created

right to retroactive refund of taxes).

5/In construing this portion of the complaint in the light most favorable to plaintiff, the court does not interpret it to be "for the purpose of restraining the assessment or collection of any tax." 26 D.S.C. § 7421 (a) (the Anti-Injunction Act).

Next, Mr. Parsons alleges that the notice of deficiency "was fraudulently manufactured" by the IRS. Compl. at 2. This claim is grounded upon a tort, a cause of action over which this court lacks jurisdiction. *Brown,* 105 F.3d at 623 (citing *L 'Enfant Plaza Props., Inc. v. United States,* 645 F.2d 886, 892 (CL Cl. 1981)). Similarly, Mr. Parsons avers that he "has made a claim for damages against the United States as the result of an illegally imposed tax debt upon [the] Linmar [Trust] by agents of the IRS, who violated the laws and codes of the United States and failed to follow administrative procedure." Pl's Sur-reply at 2; *see also* Compl. at 3. Federal district courts possess exclusive jurisdiction over such claims. *See Ledford v. United States,* 297 F.3d 1378, 1382 (Fed. Cir. 2002) (quoting 26 US.C. § 7433(a))

Mr. Parsons argues that the Tucker Act provides a further basis for this court's jurisdiction over his complaint because "the liability of taxation is founded upon adhesion contracts held by the [United States] against [the Linmar Trust]." Pl.'s Sur-reply at 3; *see also* Hr'g Tr. at 20, 22. Construing this allegation as far as possible in Mr. Parsons's favor, the court interprets it as invoking the reference in the Tucker Act to congressional acts and regulations. *See* 28 US.C. § 1491(a)(1). However, the court's jurisdiction on that basis is limited to

laws requiring the payment of money damages as compensation for the alleged violation. *Brown,* 105 F.3d at 623 (citing *Mitchell,* 463 U.S. at 218; *Murray v. United States,* 817 F.2d 1580, 1582-83 (Fed. Cir. 1987)). The statutory provisions and regulation cited in *Mr.* Parsons' complaint do not mandate the payment of money for their violation.

Mr. Parsons asserts that if this court lacks jurisdiction over his complaint, the Linmar Trust would have no legal recourse to challenge the deficiency. Pl.'s Resp. at 2-4. He is mistaken. Even though the ninety-day period after the issuance of the notice of deficiency for filing a petition with the Tax Court has expired, Mr. Parsons, on behalf of the Trust, can still pay the deficiency and penalty, submit a refund claim to the IRS, and then file suit in this court if the IRS either denies that claim or fails to respond to it within six months. *See* 26 U.S.C.§§ 651 I (a), 6532(a)(1), 7422(a); *United States v. Williams,* 514 U.S. 527, 532-36 (1995).6/

6/See 26 US.C. § 6511(a) (prescribing the period within which an administrative claim for refund must be filed as "3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later"). The statute prescribing time limitations on suits for refund, 26 U.S.C. § 6532, provides:

> *(1) General rule. - No suit or proceeding under section 7422(a) forthe recovery of any internal revenue tax, penalty, or other sum, shall bebegun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon*

> *within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.*

26 US.C. § 6532(a)(1).

CONCLUSION

For the reasons set out above, the government's motion to dismiss is GRANTED, and this case shall be dismissed for lack of subject matter jurisdiction. The clerk shall enter judgment dismissing the complaint. No costs.

It is so ORDERED.

APPENDIX B

United States Court of Appeals for the Federal Circuit

05-5168

. NORMAN PARSONS, on behalf of
LINMAR PROPERTY MANAGEMENT TRUST,
Plaintiff-Appellant,
v.
UNITED STATES, .
Defendant-Appellee.

DECIDED: March 10, 2006

Before, RADER, SCHALL, and LINN, Circuit Judge.

RADER, Circuit Judge.

The United States Court of Federal Claims entered a judgment dismissing this case for lack of jurisdiction. Although Norman Parsons did not timely file a notice of appeal on the judgment, this court considers his notice a timely filed notice of appeal on the denial of his motion for reconsideration. Because Mr. Parsons did not show any grounds for reconsidering the Court of Federal Claims' judgment, this court affirms.

On December 22, 2004, Mr. Parsons filed a complaint in the Court of Federal Claims on behalf of

Linmar Property Management Trust (Linmar) because the Internal Revenue Service (IRS) sought income taxes and penalties for the tax year ended December 31, 2000. Mr. Parsons alleged that the IRS violated 26 U.S.C. § 6501, by issuing a notice of deficiency to Linmar without making an assessment within three years. Therefore, Mr. Parsons contended that the notice of deficiency "was entered" by the IRS in violation of 26U.S.C. §§ 6201(a)(1), 6203, and 6211, and 26 C.F.R.§ 301.6203-1. Linmar has neither paid the tax at issue, nor filed a timely claim for refund with the IRS.

In his suit Mr. Parsons demands the IRS "cease and, desist" its "illegal activity" and follow "law and procedure" in "any attempt to collect any alleged tax liability from Linmar." Mr. Parsons also seeks $250,000 in damages. After a hearing on the Government's motion to dismiss on jurisdictional grounds, the Court of Federal Claims entered a judgment dismissing the suit for lack of subject matter jurisdiction on May 24, 2005. Parsons ex rel. Linmar Property Mgmt. Trust v. United States, 65 Fed. Cl. 638(2005). The Court of Federal Claims held that it had no jurisdiction under the Tucker Act, 28 U.S.C. § 1491, and that it had no jurisdiction for a claim grounded upon a tort. Parsons, 65 Fed. Cl. at 639-41. It also pointed out that the only tax-related dispute over which the court has limited jurisdiction was for a tax refund, but that Mr. Parsons did not make a claim for a tax refund. Id.

On July 13, 2005, after the ten-day deadline expired, Mr. Parsons filed a United States Court of Federal Claims Rule 59 motion for reconsideration. On July 26, 2005,the court denied the motion for reconsideration, because Mr. Parsons did not present any permissible ground on which the court should reconsider its judgment. On September 22, 2005, Mr. Parsons filed a notice of appeal to this court. Because a motion to

reconsider does not toll the deadline to file a notice of appeal on the judgment, he did not timely file a notice of appeal. The sixty-day deadline to appeal the

judgment expired on September 12, 2005. F.R.A.P. 4(a)(4). However, because Mr. Parsons filed a notice of appeal within sixty-days of the denial of his motion for reconsideration, this court has jurisdiction to consider his appeal of the Court of Federal Claims' denial of his motion to reconsider.

This court reviews the Court of Federal Claims' denial of Mr. Parsons' motion for an abuse of discretion. Mass. Bay Transp. Auth. v. United States, 254 F.3d 1367, 1368(Fed. Cir. 2001) (citing Aiinomoto Co. v. Archer-Daniels-Midland Co., 228 F.3d 1338,1350 (Fed. Cir. 2000). It is well recognized that "[a] motion for reconsideration is addressed to the discretion of the trial court." Triax Co. v. United States, 20 CI. Ct. 507, 509 (1990) (citing Eyre V. McDonouoh Power Equip., 755 F.2d 416, 420 (5th Cir. 1985)(construing FRCP 59)); see Yuba Natural Resources. Inc. v. United States, 904 F.2d 1577,1583 (Fed. Cir. 1990).

Rule 59 of the United States Court of Federal Claims permits reconsideration for one of three reasons: (1) that an intervening change in the controlling law has occurred; (2) that previously unavailable evidence is now available; or (3) that the motion is necessary to prevent manifest injustice. Henderson County Drainage Dist. No.3. V. United States, 55 Fed. CI. 334 (2003); see also Weyerhaeuser Corp. v. Koppers Co., 771 F.Supp. 1406, 1419 (D.Md. 1991). Post-opinion motions to reconsider are not favored, especially "where a party has had a fair opportunity to . . . litigate the point in issue." Prestex. Inc.

V. United States, 4 CI. Ct. 317, 318 (1984), *aff'd,* 746 F.2d 1489(Fed. Cir. 1984) (citing Gen. Elec. Co. v. United States, 416 F.2d 1320, 1321 (Ct. CI. 1969)). Generally, a motion under Rule 59 must be based upon manifest error of law, or mistake of fact, and is not intended to give an unhappy litigant an additional chance to sway the court." Weaver-Bailey Contractors. Inc. v. United States, 20 CI. Ct. 158(1990).

Mr. Parsons has not shown that an intervening change in the controlling law has occurred; that previously unavailable evidence is now available; or that the motion is necessary to prevent manifest injustice. Mr. Parsons presented a regulation that was available when the Government filed its motion to dismiss. Newly discovered evidence is only such evidence as could not have been discovered by exercise 'of due diligence prior to rendition of decision. Girault v. United States, 135 F .Supp. 521, 524 (Ct. CI.1955). Mr. Parsons also argued that the Court of Federal Claims did not correctly and completely address points and issues he raised. "Litigants should not, on a motion for reconsideration, be permitted. to attempt an extensive retrial based on evidence which was manifestly available at [the] time of the hearing." Gelco Builders & Buriav Constr. Corp. v. United States, 369 F.2d 992, 1000 n. 7 (1966). This court finds no manifest error of law or mistake of fact, or that any manifest injustice required the Court of Federal Claims to reconsider its decision to dismiss this case for lack of jurisdiction.

This court, therefore, affirms.
05-5168

APPENDIX C

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
No. 04-1798 T
(Filed: July 26, 2005)
Defendant.

NORMAN PARSONS, on behalf of
LINMAR PROPERTY MANAGEMENT
TRUST,

Plaintiff,
v.
THE UNITED STATES,

ORDER

The court acknowledges plaintiffs Motion for Reconsideration. That motion was filed July 13, 2005 by leave of the court. The motion was received by the clerk on July 11, 2005 but was not filed immediately because (1) the submission bore an incorrect docket number, (2) the copies required by Rule 5.3(d) of the Rules of the Court of Federal Claims ("RCFC") were not provided, and (3) the submission was untimely if it were intended to constitute a motion pursuant to RCFC 59. In causing the motion to be filed, the court in effect waived the errors associated with the use of an incorrect docket number and the lack of copies. The court did not, however, excuse compliance with the time limitation of RCFC 59(e).

The motion seeks reconsideration of a decision rendered by the court on May 24,2005,reported as *Parsons ex rel. Linmar Property Management Trust v. United States,*__ Fed. Cl._, 2005 WL 1230631 (May 24, 2005). Judgment was entered on the same day the decision was issued, *i.e.,* May 24,2005.

The motion for reconsideration is hereby **DENIED**. It was filed past the time for filing motions for reconsideration under RCFC 59(e), and the motion has no merit.

It is so ORDERED.

RECEIVED

AUG 06, 2005
NORMAN PARSONS
535 N. Church Street
Visalia, CA 93291-5004
04-1798